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August 08, 1995

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FCC MAIL ROOM

Office of the Secretary
Federal Communications Commission
1919 "M" Street, Northwest
Washington DC 20554

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Re: Notice of Inquiry in CS Docket #95-61
The effect of program access rules on small cable television systems

Thank you for the opportunity to comment on the availability of programming to small cable TV operators on fair terms and conditions.

1. Price equals availability. It must be obvious to us all that availability is, to a great degree, a function of price. Large multi-system operators ("MSO's") (vs. small operators) benefit from discounts on programming services. Some years ago these discounts were stated in contracts. Now they are not, and in any event, our contracts enjoin us from quoting their contents to third parties. If the FCC on its own initiative studied the discounting practices of programming services, significant pricing differences would be apparent. Here are some examples:

a. In Seattle, Viacom offers a package of four premium channels (HBO/Showtime/Movie Channel/Disney) for $21.95. Summit's product cost for the same package of these four services in Seattle is $20.29. There are other costs of selling pay services in addition to product cost. If we were to offer this same package at $21.95, we would lose money on each package sold. Since companies generally market products and services to make money, it is fair to infer that Viacom's cost of product is materially below what we pay.

b. The pay-per-view package for the Seattle Supersonics is sold through Prime Sports Northwest which is owned by TCI and Viacom. The first year this package was offered, TCI and Viacom enjoyed a 50/50 split of revenues. Summit and other small operators were offered a 45% share, without negotiations.

c. In the private cable industry, the cost of product for some satellite services is less per customer than Summit's cost, even though the private cable businesses are smaller than ours.

The FCC rules seem to have had a favorable effect on program pricing to competitors of cable and an unfavorable effect on small cable TV operators versus just about everyone else.

The discounts given to large MSO's adversely affect public policy. Since a very large operator can make more money per customer with any given cable TV system than a small operator can, each such customer has greater value to the large operator. This premium causes large operators

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to buy up small cable companies, resulting in increased consolidation of the cable TV industry, a trend quite in evidence in recent years.

With universal satellite distribution of programming, and with each cable system paying its own receiving costs, there is no cost differential to the satellite programmer in supplying programming to various size customers, and thus no volume justification for pricing differentials. The ability to turn off decoders with a few keystrokes illustrates, similarly, that there is little credit advantage in selling to large over small operators. Since small operators are often forced to take or leave the offered deal, and since negotiations continue at length for the business of large operators, the marketing costs of programmers would seem to be lower for small cable operators on a per customer basis. In sum, as one continues this type of exercise, it becomes more and more apparent that there is no cost or analytical justification for pricing differentials in programming services <u>other than the market power enjoyed by large MSO's.</u>

2. <u>Program access is sometimes denied.</u> Beyond pricing issues, small cable operators are occasionally denied even the ability to carry a satellite service. Some local examples include:

> a. F/X. The F/X Network has exclusive contracts with TCI and with Viacom in the Seattle area. Summit operates a cable TV system in Seattle. F/X reported to us that as required by their exclusive contracts F/X asked both TCI and Viacom for permission to allow us to carry F/X. F/X reported that Viacom approved our carriage of F/X, but TCI refused to waive its exclusive rights. Two years later, F/X is still not on our Seattle system.
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> b. Several years ago All Points Cable TV built a cable system in Fall City, Wa., over building the existing TCI system in that area. The owner of All Points received telephone calls from a number of his satellite service vendors, telling him that his service would be cut off in the Fall City area. This small business owner made the King County Council aware of the situation. The Council passed an ordinance requiring that anyone operating a cable TV system in King County must, as a condition of its franchise, make programming services which they own available to any other county cable operator. The passage of this ordinance ended the problem.

Summit manages 29 cable TV systems serving 36,000 cable TV customers, primarily in rural communities in western Washington. Summit is privately owned by its management and employs 87 people. We appreciate the opportunity to have an input on this continuing problem of programming pricing and availability.

Sincerely,

James A. Hirshfield
by RJG

cc: The Honorable Slade Gorton
The Honorable Rick White